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Edward S. Wright, Esq.
Suite 3400
Four Embarcadero Center
San Francisco CA 94111-4187

COPY MAILED

AUG 23 2004

OFFICE OF PETITIONS

In re Application of	:	
Martin Clive-Smith et al.	:	
Application No. 10/726,763	:	DECISION GRANTING
Filed: December 2, 2003	:	PETITION UNDER 37 C.F.R.
Attorney Docket No. A-70132-1/ESW	:	\$1.53(B)
Title: ADJUSTABLE POST FOR CONTAINER	:	

This is a decision on the petition filed April 9, 2004, requesting the application, including 15 sheets of drawings, containing Figures 1A - 19, be accorded a filing date of December 2, 2003 as part of the original disclosure.

The application was deposited on December 2, 2003. However, on March 5, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice of Incomplete Nonprovisional Application - Filing Date NOT Granted (notice) stating that the application appeared to have been deposited without drawings, and that a filing date would be accorded upon the depositing of drawings.

In response, on April 9, 2004, applicants filed the present petition. The petition is further accompanied by a copy of 15 sheets of drawings, containing Figures 1A - 19, along with a copy of applicants' postcard receipt acknowledging receipt of "drawings" in the United States Patent and Trademark Office (Office) on December 2, 2003. Applicants request that the application, including 15 sheets of drawings, containing Figures 1A - 19 be accorded a filing date of December 2, 2003.

Upon review of the record, the above-mentioned figures have not been located among the application papers.

Petitioner will note that Section 503 of the MPEP, entitled Application Number and Filing Receipt, sets forth, in part:

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

(Emphasis added)

As such, the postcard receipt, which Petitioner has submitted with the instant petition, is poorly itemized in that it does not list the number of pages which were submitted. However, as no drawings were received, the Office will interpret the notation of "drawings" to include the 15 sheets containing Figures 1A - 19. In the future, Petitioner may wish mark his postcard receipts with increased specificity.

For this reason however, the evidence is convincing that the application papers deposited on December 2, 2003 included 15 sheets of drawings, containing Figures 1A - 19, and the sheets which contained these figures were subsequently misplaced in the Office.

Therefore, the application, including 15 sheets of drawings, containing Figures 1A - 19 was complete on filing and entitled to a filing date of December 2, 2003 as part of the original disclosure.

Accordingly, the petition is **GRANTED**.

The notice mailed December 2, 2003 was sent in error. Therefore, no petition fee is necessary. The petition fee of \$130 has not been charged to petitioner's Deposit Account.

The application file is being returned to OIPE for further processing with a filing date of December 2, 2003, using the original application papers filed on that date, as well as 15 sheets of drawings, containing Figures 1A - 19 of the specification submitted on April 9, 2004. OIPE will then issue a corrected filing receipt.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011. Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria. Although the mailing address will remain the same, the general phone number for the Office of Petitions which should be used for status requests will change to 571-272-3282, and the telephone number for the undersigned will change to 571-272-3225.



Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office